

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ESTANISLAO TUBAC CALI,

1:18-cv-6263

Plaintiff,

ANSWER

-against-

VIA BRASIL RESTAURANT and/or any other entities affiliated
with or controlled by VIA BRASIL RESTAURANT, and
LUIS GOMEZ, individually,

Defendants.
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Defendants, by their attorney Nathan M. Ferst, for their Answer state and allege:

1. Paragraph "1" of Plaintiff's Complaint contains legal conclusions or statements of law that require no response; however, to the extent that Plaintiff has alleged any other material allegations, Defendants deny the same.
2. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in paragraph "2" of Plaintiff's Complaint.
3. Defendants deny the allegations set forth in paragraph "3" of Plaintiff's Complaint.
4. Defendants deny the allegations set forth in paragraph "4" of Plaintiff's Complaint.
5. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in paragraph "5" of Plaintiff's Complaint.
6. Defendants deny the allegations set forth in paragraph "6" of Plaintiff's Complaint.

7. Defendants deny the allegations set forth in paragraph “7” of Plaintiff’s Complaint.

8. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in paragraph “8” of Plaintiff’s Complaint.

9. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in paragraph “9” of Plaintiff’s Complaint.

10. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in paragraph “10” of Plaintiff’s Complaint.

11. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph “11” of Plaintiff’s Complaint.

12. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in paragraph “12” of Plaintiff’s Complaint.

13. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in paragraph “13” of Plaintiff’s Complaint.

14. Defendants deny the allegations set forth in paragraph “14” of Plaintiff’s Complaint.

15. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in paragraph “15” of Plaintiff’s Complaint.

16. Defendants deny the allegations set forth in paragraph “16” of Plaintiff’s Complaint.

17. Defendants deny the allegations set forth in paragraph “17” of Plaintiff’s Complaint.

18. Defendants deny the allegations set forth in paragraph “18” of Plaintiff’s Complaint.

19. Defendants deny the allegations set forth in paragraph “19” of Plaintiff’s Complaint.

20. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in paragraph “20” of Plaintiff’s Complaint.

21. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in paragraph “21” of Plaintiff’s Complaint.

22. Defendants deny the allegations set forth in paragraph “22” of Plaintiff’s Complaint.

23. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph “23” of Plaintiff’s Complaint.

24. Defendants deny the allegations set forth in paragraph “24” of Plaintiff’s Complaint.

25. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph “25” of Plaintiff’s Complaint.

26. Defendants deny the allegations set forth in paragraph “26” of Plaintiff’s Complaint.

27. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph “27” of Plaintiff’s Complaint.

28. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph “28” of Plaintiff’s Complaint.

29. Defendants deny the allegations set forth in paragraph “29” of Plaintiff’s Complaint.

30. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph “30” of Plaintiff’s Complaint.

31. Defendants deny the allegations set forth in paragraph “31” of Plaintiff’s Complaint.

32. Defendants deny the allegations set forth in paragraph “32” of Plaintiff’s Complaint.

33. Defendants repeat and reallege each and every response contained above in paragraphs “1” through “32” with the same force and effect as if hereinafter set forth at length.

34. Paragraph “34” of Plaintiff’s Complaint contains legal conclusions or statements of law that require no response; however, to the extent that Plaintiff has alleged any other material allegations, Defendants deny the same.

35. Paragraph “35” of Plaintiff’s Complaint contains legal conclusions or statements of law that require no response; however, to the extent that Plaintiff has alleged any other material allegations, Defendants deny the same.

36. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph “36” of Plaintiff’s Complaint.

37. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph “37” of Plaintiff’s Complaint.

38. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph “38” of Plaintiff’s Complaint.

39. Defendants deny the allegations set forth in paragraph “39” of Plaintiff’s Complaint.

40. Defendants deny the allegations set forth in paragraph “40” of Plaintiff’s Complaint.

41. Defendants deny the allegations set forth in paragraph “41” of Plaintiff’s Complaint.

42. Defendants repeat and reallege each and every response contained above in paragraphs “1” through “41” with the same force and effect as if hereinafter set forth at length.

43. Paragraph “43” of Plaintiff’s Complaint contains legal conclusions or statements of law that require no response; however, to the extent that Plaintiff has alleged any other material allegations, Defendants deny the same.

44. Paragraph “44” of Plaintiff’s Complaint contains legal conclusions or statements of law that require no response; however, to the extent that Plaintiff has alleged any other material allegations, Defendants deny the same.

45. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph “45” of Plaintiff’s Complaint.

46. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph “46” of Plaintiff’s Complaint.

47. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph “47” of Plaintiff’s Complaint.

48. Defendants deny the allegations set forth in paragraph “48” of Plaintiff’s Complaint.

49. Defendants deny the allegations set forth in paragraph “49” of Plaintiff’s Complaint.

50. Defendants deny the allegations set forth in paragraph “50” of Plaintiff’s Complaint.

51. Defendants repeat and reallege each and every response contained above in paragraphs “1” through “50” with the same force and effect as if hereinafter set forth at length.

52. Paragraph “52” of Plaintiff’s Complaint contains legal conclusions or statements of law that require no response; however, to the extent that Plaintiff has alleged any other material allegations, Defendants deny the same.

53. Paragraph “53” of Plaintiff’s Complaint contains legal conclusions or statements of law that require no response; however, to the extent that Plaintiff has alleged any other material allegations, Defendants deny the same.

54. Paragraph “54” of Plaintiff’s Complaint contains legal conclusions or statements of law that require no response; however, to the extent that Plaintiff has alleged any other material allegations, Defendants deny the same.

55. Paragraph “55” of Plaintiff’s Complaint contains legal conclusions or statements of law that require no response; however, to the extent that Plaintiff has alleged any other material allegations, Defendants deny the same.

56. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph “56” of Plaintiff’s Complaint.

57. Paragraph “57” of Plaintiff’s Complaint contains legal conclusions or statements of law that require no response; however, to the extent that Plaintiff has alleged any other material allegations, Defendants deny the same.

58. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph “58” of Plaintiff’s Complaint.

59. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph “59” of Plaintiff’s Complaint.

60. Defendants deny the allegations set forth in paragraph “60” of Plaintiff’s Complaint.

61. Defendants deny the allegations set forth in paragraph “61” of Plaintiff’s Complaint.

62. Defendants deny the allegations set forth in paragraph “60” of Plaintiff’s Complaint.

63. Defendants repeat and reallege each and every response contained above in paragraphs “1” through “62” with the same force and effect as if hereinafter set forth at length.

64. Paragraph “64” of Plaintiff’s Complaint contains legal conclusions or statements of law that require no response; however, to the extent that Plaintiff has alleged any other material allegations, Defendants deny the same.

65. Paragraph “65” of Plaintiff’s Complaint contains legal conclusions or statements of law that require no response; however, to the extent that Plaintiff has alleged any other material allegations, Defendants deny the same.

66. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph “66” of Plaintiff’s Complaint.

67. Defendants deny the allegations set forth in paragraph “67” of Plaintiff’s Complaint.

68. Defendants deny the allegations set forth in paragraph “68” of Plaintiff’s Complaint.

69. Defendants deny the allegations set forth in paragraph “69” of Plaintiff’s Complaint.

70. Defendants repeat and reallege each and every response contained above in paragraphs “1” through “69” with the same force and effect as if hereinafter set forth at length.

71. Paragraph “71” of Plaintiff’s Complaint contains legal conclusions or statements of law that require no response; however, to the extent that Plaintiff has alleged any other material allegations, Defendants deny the same.

72. Defendants deny the allegations set forth in paragraph “72” of Plaintiff’s Complaint.

73. Defendants deny the allegations set forth in paragraph “73” of Plaintiff’s Complaint.

74. Defendants deny the allegations set forth in paragraph “74” of Plaintiff’s Complaint.

75. Defendants repeat and reallege each and every response contained above in paragraphs “1” through “74” with the same force and effect as if hereinafter set forth at length.

76. Paragraph "76" of Plaintiff's Complaint contains legal conclusions or statements of law that require no response; however, to the extent that Plaintiff has alleged any other material allegations, Defendants deny the same.

77. Paragraph "77" of Plaintiff's Complaint contains legal conclusions or statements of law that require no response; however, to the extent that Plaintiff has alleged any other material allegations, Defendants deny the same.

78. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph "78" of Plaintiff's Complaint.

79. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph "79" of Plaintiff's Complaint.

80. Defendants deny the allegations set forth in paragraph "80" of Plaintiff's Complaint.

81. Defendants deny the allegations set forth in paragraph "81" of Plaintiff's Complaint.

82. Defendants repeat and reallege each and every response contained above in paragraphs "1" through "81" with the same force and effect as if hereinafter set forth at length.

83. Paragraph "83" of Plaintiff's Complaint contains legal conclusions or statements of law that require no response; however, to the extent that Plaintiff has alleged any other material allegations, Defendants deny the same.

84. Paragraph "84" of Plaintiff's Complaint contains legal conclusions or statements of law that require no response; however, to the extent that Plaintiff has alleged any other material allegations, Defendants deny the same.

85. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph “85” of Plaintiff’s Complaint.

86. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph “86” of Plaintiff’s Complaint.

87. Defendants deny the allegations set forth in paragraph “87” of Plaintiff’s Complaint.

88. Defendants deny the allegations set forth in paragraph “88” of Plaintiff’s Complaint.

89. Defendants deny the allegations set forth in paragraph “89” of Plaintiff’s Complaint.

90. Defendants repeat and reallege each and every response contained above in paragraphs “1” through “89” with the same force and effect as if hereinafter set forth at length.

91. Paragraph “91” of Plaintiff’s Complaint contains legal conclusions or statements of law that require no response; however, to the extent that Plaintiff has alleged any other material allegations, Defendants deny the same.

92. Paragraph “92” of Plaintiff’s Complaint contains legal conclusions or statements of law that require no response; however, to the extent that Plaintiff has alleged any other material allegations, Defendants deny the same.

93. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph “93” of Plaintiff’s Complaint.

94. Paragraph "94" of Plaintiff's Complaint contains legal conclusions or statements of law that require no response; however, to the extent that Plaintiff has alleged any other material allegations, Defendants deny the same.

95. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph "95" of Plaintiff's Complaint.

96. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph "96" of Plaintiff's Complaint.

97. Defendants lack knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph "97" of Plaintiff's Complaint.

98. Defendants deny the allegations set forth in paragraph "98" of Plaintiff's Complaint.

99. Paragraph "99" of Plaintiff's Complaint contains legal conclusions or statements of law that require no response; however, to the extent that Plaintiff has alleged any other material allegations, Defendants deny the same.

100. Defendants deny the allegations set forth in paragraph "100" of Plaintiff's Complaint.

FIRST DEFENSE

101. The Complaint fails to state a cause of action upon which relief may be granted.

SECOND DEFENSE

102. At all times, Defendants acted in good faith with reasonable grounds for their belief that they were not in violation of applicable federal and state laws.

THIRD DEFENSE

103. To the extent that Defendants may have erroneously believed that any and all of Defendants' acts and/or omissions was/were not in violation of applicable law, Defendants relied on reasonable, albeit erroneous interpretation of applicable federal and state laws or regulations issued thereunder.

FOURTH DEFENSE

104. Plaintiff's(s') action is barred by Plaintiff's(s') unclean hands.

FIFTH DEFENSE

105. Plaintiff's(s') action is barred by accord and satisfaction.

SIXTH DEFENSE

106. Plaintiff's(s') action is barred by the applicable statutes of limitations.

SEVENTH DEFENSE

107. Any damages suffered by Plaintiff(s) were occasioned by Plaintiff's(s') acts and/or omissions without Defendants contributing thereto.

EIGHTH DEFENSE

108. Plaintiff(s) claims is/are barred by the doctrine of waiver.

NINTH DEFENSE

109. Plaintiff(s) claims is/are barred by release.

TENTH DEFENSE

110. Any failure of Defendants to pay wages, overtime wages, spread of hours payments, or any other compensation found due and owing to Plaintiff(s) was not willful.

ELEVENTH DEFENSE

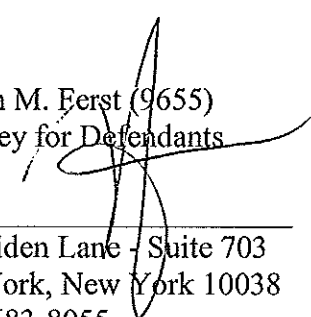
111. Plaintiff failed to prevent the harm which Plaintiff alleges to have suffered by the acts and omissions of Defendants in that, in accordance with the doctrine of avoidable consequences, Plaintiff had a duty to avoid or minimize the damages alleged in the Complaint, but Plaintiff failed to do so and, further, Plaintiff fails to allege any facts showing that Plaintiff attempted to avoid or minimize the damages alleged by Plaintiff.

TWELFTH DEFENSE

112. Plaintiff failed to inform Defendants of Plaintiff's time spent working for Defendants and, by so failing, Plaintiff breached Plaintiff's obligation in the proper implementation of the relevant wage and hour laws which Plaintiff alleges Defendants have violated.

WHEREFORE, Defendants demand judgment dismissing the Complaint with prejudice, awarding Defendants their attorneys fees herein, and granting Defendants such other and further relief as may be just and proper.

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Attorney for Defendants

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